From: Jeremy White
To: Microsoft ATR
Date: 1/24/02 4:20pm
Subject: Microsoft Settlement

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To Whom it May Concern:

Pursuant to the Tunney Act, I am writing to comment on the proposed
settlement of the United States vs. Microsoft antitrust case.
Background:

I am the founder and CEO of CodeWeavers, Inc. CodeWeavers provides
products and services that enable our customers to use Windows
technology in non Windows environments, such as Linux. We use and
support an open source technology known as the Wine Project.

The Wine Project is an implementation of the Microsoft Windows API. It
can run on top of a variety of operating systems, notably the Linux
operating system. It provides two important functions: it allows end
users to run existing Windows applications on Linux, and it allows
Independent Software Vendors (ISVs) to convert their applications from
Windows to Linux quickly and easily.

A fully completed Wine Project would have two dramatic impacts on the
marketplace. First, if combined with a Linux operating system, it would
create a fully Windows compatible version of Linux. This Linux and Wine
combination would serve as a direct and effective competitor to
Microsoft's Windows Operating System products. Second, if Wine realized
its promise, it would be trivial for an ISV with a Windows product to
create a version of their application for Linux, thereby lowering the
application barrier to competition described in the findings of fact.

Therefore, I believe that an examination of the proposed remedy and its
impact on the Wine Project is extremely relevant in determining how
effective the proposed remedy will be.

The Wine Project is an entirely volunteer effort. It is organized via a
central web site, www.winehq.com. While my company tries to play a
central role in helping develop Wine, the Wine Project itself cannot
reasonably be called a business or even a non profit organization.

Specific Failing in the Proposed Settlement:

First of all, as I understand the proposed relief, the only sections
with direct bearing on Wine are sections III.D and III.E. These sections
would seem to attempt to insure that third parties would have access to
information about Microsoft APIs and communications protocols.

1. III.D. API Disclosure
   It is completely unclear how this requirement differs from what
they do now voluntarily. The Windows API is incredibly complex and very
difficult to document. One competitive barrier Microsoft uses is that
they document most of their API, but omit certain key pieces of

information. However, an omission of information is nearly impossible to prove. Further, there seems to be some belief that if third parties have access to the source code, the documentation will somehow magically improve. I do not see how this could be - reviewing the source code and correcting the documentation will be a monumental task, and no third party that I know has the resources or ability to do this.

2. III.J.2 Exceptions

This section specifically excludes Wine from participating in the benefits of III. MS has so ruthlessly exterminated all business competitors, that the only viable competition comes from volunteer efforts. Yet III.J.2 easily allows Microsoft the latitude to exclude Wine Project volunteers from the benefits of these remedies. The Wine Project certainly would fail to meet "reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business", because it is not a business.

In fact, III.J.2 could be read such that Microsoft could actually refuse to provide MSDN information to volunteers working on the Wine Project. Thus, as a result of III.J.2, Microsoft would have the ability to cut off information given to projects such as Wine, and this remedy may actually prove harmful to the Wine Project.

Omissions in the Proposed Settlement:

A major component in the Findings of Fact discussed the "Applications Barrier to Entry" (section III. B.). The Findings of Fact go on to discuss that if a competitive implementation of the Windows API could be created, it would go a long way towards easing this barrier. It also goes on to posit that the task is too difficult to be viable.

However, Wine has made major strides in recent years. Wine is now able to run many Windows applications, and has been used to port some major software systems (including Corel WordPerfect Office and Borland's Kylix products).

Yet nothing in the proposed settlement does anything to encourage the development of competitive systems such as Wine.

I think it is unacceptable that the court find that a major barrier to true competition is unsolvable, because I believe there are several actions the court can take that would squarely address the issue, as follows:

1. Actively, not passively, document the Windows API

As touched upon in my comments, above, if a well funded, neutral third party organization was created or hired to research and fully document the Windows API, this would dramatically accelerate the ability of the Wine Project team members to compete with Microsoft.

We spend an enormous amount of our time and energy deducing the correct behavior of the Windows API through difficult trial and error processes, simply because the documentation is not complete enough.

This could be rectified if a well funded third party produced a clear and complete set of documentation.

In fact, there is already a European (ECMA-234) standard for the Windows API. This third party could enhance and extend this specification.

2. Protect people who would use Wine from retaliation by Microsoft.

One of the reasons that Wine has not been further adopted is that Microsoft has successfully used 'Fear, Uncertainty, and Doubt' to scare business managers away from using non Microsoft solutions.

For example, when selecting a method of porting a major application to Linux, one prospect of mine was comparing Wine and a toolkit called 'MainWin'. MainWin is made by Mainsoft, and Mainsoft licenses its software from Microsoft.

However, this customer elected to go with the Mainsoft option instead. I was told that one of the key decision making factors was that the Mainsoft representatives had stated that Microsoft had certain critical patents that Wine was violating. My customer could not risk crossing Microsoft, and declined to use Wine. I didn't even have a chance to determine which patents were supposedly violated; nor to disprove the validity of this claim. For my customer, the risk of crossing Microsoft was too great to even contemplate using Wine.

I think it is very telling that the attorney for the dissenting States is having to promise protection from retaliation to all of its potential witnesses, and even with that is having trouble finding people to testify.

So, my suggestion would be to amend the remedy to explicitly protect projects such as Wine, Samba, and Kerberos from the offensive use by Microsoft of its patents.

Specific Harm to Consumers

For the most part, I have focused my comments on the Wine Project. Let me take a moment and explain how the failure of the Wine Project directly harms consumers.

It is easy, but wrong, to argue that having a single operating system be the standard desktop operating system is actually a benefit to consumers. This argument is like asserting that having only one car model would be easier for mechanics. How would you feel if your only choice was a Yugo? What's the harm, you can drive anywhere you want to, right?

Having viable, competitive operating systems has the potential to dramatically improve the benefit consumers receive from their operating system. For example, having an alternate operating system would mean that corporations would not be shut down periodically by email viruses. Having an alternate operating system might mean that a school system could realize dramatic savings by using Free software, and perhaps accepting some more limited functionality.

The single largest barrier standing in the way of real competition is the applications barrier to entry. People don't select an operating system based on its features; they select it based on what applications it runs. If Wine succeeds, then that barrier will be greatly reduced.

By making sure that the remedy chosen to correct Microsoft's monopolist behaviour enables projects such as Wine to succeed, you insure that the market will soon see viable alternative operating system choices, and consumers will be able to reap the benefits in more stable, secure, and cost effective computing environments.

Closing Comments

I have focused my comments here on how the proposed settlement would affect the Wine Project.

I feel that the proposed settlement has other serious flaws. However, I felt it best if I focused on my area of expertise, and let others speak for me on more general issues.

To that end, I would like to echo the comments made by Dan Kegel, whose comments can be viewed at http://www.kegel.com/remedy/letter.html . I strongly support his overall comments on the proposed settlement and would like to add my voice to his.

To whoever is reading this, I realize that you have had to wade through a lot of material. I very much appreciate your time and effort.
Sincerely,

Jeremy P. White
CEO, CodeWeavers, Inc.

p.s. This letter is viewable on the web at the following web address:
www.codeweavers.com/~jwhite/tunneywine.html